The Special Relationship Between Student-Athletes and Colleges: An Analysis of a Heightened Duty of Care for the Injuries of Student-Athletes

Andrew Rhim
THE SPECIAL RELATIONSHIP BETWEEN STUDENT-ATHLETES AND COLLEGES: AN ANALYSIS OF A HEIGHTENED DUTY OF CARE FOR THE INJURIES OF STUDENT-ATHLETES

I. INTRODUCTION

Intercollegiate sports today have generated a multi-million dollar entertainment industry. For example, the National Collegiate Athletic Association (NCAA) is currently in a seven-year, $1 billion contract with CBS, the broadcaster of the NCAA Men's Basketball Tournament. The vast commercial nature of major college athletics today is undeniable. These programs produce tremendous economic and non-economic benefits for colleges and universities.

While this increased financial interest in college athletics is not a recent phenomenon, debate continues to grow over what is "due" college-athletes who help generate substantial revenue for major college athletic departments. Student-athletes continue to receive the traditional kinds of benefits from universities, namely an environment in which to attain a degree. The NCAA has maintained its principle of

1. For example, the University of Michigan, Illinois, Duke, and Seton Hall each received about $1.23 million for their participation in the 1989 NCAA Men's Basketball Championship Tournament. Cathy J. Jones, College Athletes: Illness or Injury and the Decision to Return to Play, 40 B.U. L. REV. 113, 154 (1992).

2. The NCAA is composed of almost 1000 member institutions. Member schools are divided into three main legislative and competitive divisions, depending on the size of the school and the expansiveness of the athletic program. The NCAA's purpose is to create policy regarding intercollegiate athletics. It supervises conduct and the needs of its member institutions, enforces safety, administrative, athletic, and educational guidelines affecting college athletics. See generally George W. Schubert et al., Sports Law (1986) (discussing the role of the NCAA in the regulation of intercollegiate athletics).


4. In reality, only a select group of college athletic departments generate the tremendous levels of revenues each year. Most college athletic programs do not make a profit. Murray Sperber, College Sports, Inc.: The Athletic Department vs. The University 2 (1990).

amateurism—in other words, student-athletes are to be motivated primarily by education. The NCAA persists in the belief that an athlete's participation in college athletics is rewarded with an education, rather than with money.

However, critics and commentators believe that the nature of the college athletic system must be re-evaluated. Fundamental questions about what colleges “owe” to revenue-producing student-athletes continue to be raised. Should these athletes receive a portion of that revenue? Generally, what legal duties do colleges owe student-athletes?

It has been proposed that the concept of amateurism be replaced by treating the college and student-athlete relationship as one of employer-employee. While the courts have generally refused such an arrangement, they have recognized a limited duty of care owed by colleges to students in general. This limited duty, however, is not enough. There is growing legal and scholarly support for the idea of student-athletes being protected by a “heightened” duty of care.

This comment explores the special relationship between colleges and student-athletes. Part II discusses the limited nature of the duty of care owed to private students by colleges. Part III discusses the duty of care owed to student-athletes by colleges and argues that a “special relationship” characterized by mutual dependence exists between the two. Finally, Part IV highlights some recent cases which support the notion

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13. This comment will distinguish “private students” from “student-athletes.” “Private students” means those students who are not participants in intercollegiate athletics.
that a "heightened" duty of care should exist for the foreseeable injuries of student-athletes.

II. DUTY OF CARE OWED TO PRIVATE STUDENTS BY COLLEGES

Generally, no duty recognized by law exists absent a special circumstance. While exceptions exist, courts have not been inclined to find colleges liable for injuries to students while at college. In effect, universities have been absolved from liability to private students when the courts have found no special circumstances. Since the demise of the in loco parentis doctrine within the college setting, many courts have presumed that students are mature adults capable of independently regulating their own lives and have refused to police college students.

Student-plaintiffs claiming that colleges should be legally responsible for their injuries suffered during college most often file suits based on negligence. A negligence claim is a tort action, which is a theory of law that allows compensation for individuals who have sustained injuries due to the harmful conduct of another. Four elements compose a traditional negligence cause of action: (1) a duty, or obligation, recognized by law, requiring the defendant actor to conform to a certain standard of conduct; (2) a breach of the duty, or a failure on the defendant actor's part to conform to that standard; (3) a reasonably close causal connection between the injuries and the breach; and (4) an injury resulting from that breach. A legally recognized "duty," therefore, is the threshold


15. See, e.g., Bradshaw v. Rawlings, 612 F.2d 135, 141 (3rd Cir. 1979), cert. denied, 446 U.S. 909 (1980) (rejecting student-plaintiff's claim that alcohol at a school-related event imposed a duty upon the college to protect the student); Mortiboys v. St. Michael's College, 478 F.2d 196 (2nd Cir. 1973) (refusing to impose liability on a college because college employees were unaware of dangerous condition on school property that led to student's injuries).

16. See infra part II.A.1.

17. See Hegel v. Langsam, 273 N.E.2d 351 (Ohio Ct. App. 1971) (refusing to hold a college liable for lack of monitoring the non-academic activities of its students); Beach v. University of Utah, 726 P.2d 413 (Utah 1986) (reasoning that the university's purpose is to educate, not "baby sit" students).


element in a negligence claim. Duty is essentially a policy question. Because duty has its foundation in policy concerns, the analysis of legal duty changes with the consideration of shifting social norms. Thus, the changing environment caused by big-money intercollegiate athletics must be considered in re-assessing the legal duties owed by colleges to student-athletes.

A. Tort Liability or Duty of Colleges to Private Students

Despite this limited duty of care owed to students by colleges, student-plaintiffs can recover for injuries suffered while at college under several theories. The first theory claims that colleges owe a duty to protect students based on the in loco parentis doctrine, meaning “in the place of the parent.” The second theory is that colleges owe a duty of care to students based on a landowner-invitee relationship between colleges and students. The last argument used by student-plaintiffs declares that colleges owe a duty of care because of the “special relationship” between universities and students.

1. In Loco Parentis Doctrine

   The common law doctrine of in loco parentis recognizes that the relationship between a student and a school is unique and special. Under this doctrine, school authorities stand “in place of the parents” and have the authority to create regulations they consider necessary under the law regarding student’s mental training, moral and physical discipline, and general student welfare.

   The in loco parentis doctrine evolved during the 1800s into a legal relationship defined by the dominant social and judicial views of the time. College students were generally seen at that time as children requiring the protection of the college. Courts generally accepted and

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21. Id.
22. "Duty is not sancrosanct in itself, but is only an expression of the sum total of those considerations of policy which lead the law to say that the plaintiff is entitled to protection." Keeton et al., supra note 20, at 358.
23. Id. at 359.
25. See, e.g., Stetson Univ. v. Hunt, 102 So. 637 (Fla. 1924).
26. Id. at 640.
27. See William M. Beaney, Students, Higher Education and the Law, 45 Denver L.J. 511, 513-514 (1968) (declaring that courts defined legal rights between colleges and students based on the "prevailing societal and judicial attitudes of the era").
deferred to a college's paternalistic authority over students and adopted a "hands-off" policy regarding decisions of colleges in both academic and non-academic matters.\textsuperscript{29}

Yet, after the case of \textit{Brown v. Board of Education}\textsuperscript{30} in the 1950s, courts began to question the application of the in loco parentis doctrine within the context of the college setting.\textsuperscript{31} During the 1960s, the in loco parentis doctrine continued to lose its force within the framework of the college setting. Increased freedom for students on college campuses in response to social and political changes led to changed attitudes about the student-college relationship. Courts began to recognize greater individual rights of students.\textsuperscript{32} Although some individuals wish to re-assess the modern-day applicability of the in loco parentis doctrine in light of increased reckless behavior on college campuses,\textsuperscript{33} courts today continue to view this doctrine as ineffective for students alleging liability at the college level.\textsuperscript{34}

2. Landowner-Invitee Liability

In comparison to the in loco parentis doctrine, students have been more successful in holding colleges liable for injuries occurring on-campus based on the landowner-invitee relationship between colleges and students.\textsuperscript{35} Courts have legally recognized the duty of colleges to prevent on-campus student injuries because of the "special relationship" of landowner-invitee between colleges and students.\textsuperscript{36}

Despite this recognition, courts have not been as easily persuaded to impose liability on colleges for injuries students have suffered off campus.\textsuperscript{37} This disparity can be explained by focusing on the location of the

\textsuperscript{29} Beaney, \textit{supra} note 27, at 514.
\textsuperscript{30} 347 U.S. 483 (1954).
\textsuperscript{31} \textit{See}, e.g., Goldberg \textit{v. Regents of the Univ. of Cal.}, 57 Cal. Rptr. 463, 470 n.11 (Cal. Ct. App. 1967).
\textsuperscript{34} \textit{See} Bradshaw \textit{v. Rawlings}, 612 F.2d 135 (3d Cir. 1979), \textit{cert. dened}, 446 U.S. 909 (1980) (the court recognition of greater student rights foreclosed the application of in loco parentis as a basis for college liability).
\textsuperscript{35} \textit{See} Bearman \textit{v. University of Notre Dame}, 453 N.E.2d 1196 (Ind. Ct. App. 1983); Peterson \textit{v. San Francisco Community College Dist.}, 685 P.2d 1193 (Cal. 1984) (a student's status as invitee and college's status as possessor of premises created a special relationship to impose a duty on the college to protect students).
\textsuperscript{36} \textit{See supra} note 11.
\textsuperscript{37} Miyamoto, \textit{supra} note 18.
student injury. In an on-campus injury case, a student-plaintiff can clearly argue that the institution is a landowner and, therefore, possesses a duty of care to that student-plaintiff. But an injury occurring off campus creates problems for a student-plaintiff, where the school is not clearly defined as a landowner under the law. Critics have declared that college liability in such a situation should not turn on whether the injury occurred on or off campus. Furthermore, courts have not implemented strict liability on colleges for on-campus student injuries. Courts have held that a duty of care on a college does not automatically exist when a foreseeable injury has occurred, even if the incident is highly foreseeable. Therefore, the court-imposed duty of care of colleges based on landowner-invitee relationship is very limited. As a result, student-athletes have little protection from a college under the landowner-invitee theory should an injury occur during an off-campus athletic contest. However, student-athletes deserve more protection. A college's duty of care to student-athletes should not be based solely on whether an injury occurs on or off campus.

3. The “Special” Relationship of the Student and College

Some student-plaintiffs claim colleges should be held liable for injuries to students because the student and college relationship is “special.” Basic tort principles dictate that no duty of care exists unless “special” circumstances arise between the plaintiff and defendant. The Restatement (Second) of Torts §314A lists special relationships that give rise to a duty to aid or protect:

(1) A common carrier is under a duty to its passengers to take reasonable action
   (a) to protect them against unreasonable risk of physical harm, and
   (b) to give them first aid after it knows or has reason to know that they are ill or injured, and to care for them until they can be cared for by others.
(2) An innkeeper is under a similar duty to his guests.

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38. Stamatakos, supra note 14, at 486-87.
39. Miyamoto, supra note 18, at 175.
40. See Mortiboys, 478 F.2d 196 (2d Cir. 1973) (refusing to impose liability on a college because the college employees were unaware of the dangerous condition on school property that led to the student's injuries).
41. RESTATEMENT (SECOND) OF TORTS § 314 (1965) (stating that "the fact that the actor realizes or should realize that action on his part is necessary for another's aid or protection does not of itself impose upon him a duty to take such action").
42. Id. at § 314A.
(3) A possessor of land who holds it open to the public is under a similar duty to members of the public who enter in response to his invitation.

(4) One who is required by law to take or who voluntarily takes the custody of another under circumstances such as to deprive the other of his normal opportunities for protection is under a similar duty to the other.

Importantly, the list of special relations specified in Restatement §314A is not an exclusive list. Comment (b) to §314A states that:

The duties stated in this section arise out of special relations between the parties, which create a special responsibility, and take the case out of the general rule. The relations listed are not intended to be exclusive, and are not necessarily the only ones in which a duty of affirmative action for the aid or protection of another may be found.

The language of the Restatement provides courts the opportunity to recognize special relationships other than those specifically listed in §314A. Thus, courts can declare that the student-college relationship itself is a special one and impose a duty of care on colleges outside the traditional tort relationship of landowner-invitee.

The courts, however, have been reluctant to characterize the student-college relationship as "special." This reluctance to impose such a duty upon colleges is based, in part, on the courts' perceptions discussed earlier — that students are autonomous adults who are fully capable of taking care of themselves. Courts continue to recognize that colleges are institutions of higher learning, and are not meant to "insure" student safety or stand in a "special relationship" with students. Courts have held the view that colleges are "educational institutions not custodial [ones]."

III. DUTY OF CARE OWED TO STUDENT-ATHLETES BY COLLEGES

As stated earlier, courts have been reluctant to impose a broad duty of care owed by colleges to private students. Student-plaintiffs have

43. Id. at caveat (declaring that the "Institute expresses no opinion as to whether there may not be other relations which impose a similar duty").
44. Id. at § 314A, cmt.b.
45. For example, courts have refused to impose duty of care requirements on colleges when students have been injured as a result of underage drinking. See Bradshaw v. Rawlings, 612 F.2d 135, 141 (3rd Cir. 1979), cert. denied, 446 U.S. 909 (1980); Baldwin v. Zoradi, 176 Cal. Rptr. 809, 819 (Cal. Ct. App. 1981).
46. Beach v. University of Utah, 726 P.2d 413, 419 (Utah 1986).
47. See supra note 15.
been unsuccessful in establishing such a duty of care through use of the in loco parentis doctrine. They have had limited success in establishing a university's duty of care through the landowner-invitee relationship, and generally have not been successful in establishing to courts the existence of a "special relationship" between colleges and students.

However, when students are also intercollegiate athletes who generate millions for universities through television contracts and bowl appearances, shouldn't the courts view the college and student-athlete relationship differently? Do student-athletes deserve a heightened duty of care regarding foreseeable injuries during intercollegiate contests from colleges?

Colleges do owe a heightened duty of care to their student-athletes, beyond what is owed to private students. This heightened duty of care is justified because: (1) colleges do not view student-athletes as employees, while these students generate both economic and non-economic benefits for colleges; (2) student-athletes are clearly distinct from private students; and (3) student-athletes and colleges have a "special relationship" characterized by mutual dependence.

A. Athletes as Employees of Colleges?

Several commentators have declared that the NCAA should dramatically change the amateur system within which student-athletes currently participate. These commentators have stated that treating college athletes as amateurs is inadequate and does not fully protect their rights. Some have suggested that student-athletes be paid as employees of collegiate athletic programs; in essence, to view athletes as employees of the college and professionalize college sports.

Despite these outspoken critics of college sports, courts have failed to view the student-athlete and college relationship in terms of employer-employee. The courts, though, have debated in the past whether

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48. See supra notes 30 & 31.
49. See supra notes 36 & 37.
51. See Sperber, supra note 8.
52. Id. at 345. Murray Sperber asserts that the NCAA functions as a trade association for college coaches and athletic directors, implementing its wishes regardless of whether these are the best interests of the member schools [and that] coaches who control the NCAA deny the existence of any significant problems in college sports. Smith, supra note 5, at 166.
53. Id. at 345.
a student-athlete should be defined as an employee in the context of worker’s compensation claims. The Colorado Supreme Court declared in University of Denver v. Nemeth\textsuperscript{54} that a college football player fit the statutory definition of an employee.\textsuperscript{55} The Court held that the student attained a part-time job in consideration for his services and based its decision on the foundation that “[h]igher education in this day is a business, and a big one.”\textsuperscript{56} Yet, the Colorado Supreme Court reached the opposite conclusion four years later in Compensation Insurance Fund v. Industrial Accident Commission\textsuperscript{57} and denied worker’s compensation benefits for an injury sustained by a scholarship athlete during a football game.\textsuperscript{58} The Court here stated that the college could not be classified as an employer because the college was not in the football business.\textsuperscript{59}

While past cases have ruled for student-plaintiffs seeking worker’s compensation after suffering injuries while participating in college sports, recent court cases suggest that athletes are not to be considered employees covered under worker’s compensation statutes since athletic scholarships are not employment agreements. In the 1983 case Rensing v. Indiana State University,\textsuperscript{60} the Indiana Supreme Court held that the determination of the existence of an employer-employee relationship focuses on whether there was an intent to create an express or implied employment contract.\textsuperscript{61} The Court further stated that the scholarship agreement in question was awarded based on past demonstrated talent in order to enable students to pursue opportunities in higher education. In other words, the scholarship was not intended as a commercial, employment contract. In the same year, a Michigan court in Coleman v. West Michigan University\textsuperscript{62} concluded that student-athletes are not employees of the university.\textsuperscript{63} The court held that the university’s primary function is to provide students with an academic education and not to “employ” athletes to fulfill their academic mission.\textsuperscript{64}

Due to the courts reluctance to view student-athletes as employees of colleges, it seems that the professionalization of college athletics will be

\textsuperscript{54} 257 P.2d 423 (Colo. 1953).
\textsuperscript{55} Id.
\textsuperscript{56} Id. at 424-26.
\textsuperscript{57} 314 P.2d 288 (Colo. 1957).
\textsuperscript{58} Id.
\textsuperscript{59} Id. at 290.
\textsuperscript{60} 444 N.E.2d 1170 (Ind. 1983).
\textsuperscript{61} Id. at 1173.
\textsuperscript{63} Id. at 228.
\textsuperscript{64} Id. at 226.
a difficult, long-term task. Such a process would involve a fundamental re-evaluation of regulating college athletics by the NCAA. The courts have clearly stated that amateurism will remain in place.

B. Distinction Between Student-Athletes and Private Students

The differences in the treatment of student-athletes and private students by colleges justify a heightened duty of care for student-athletes. Private students can exercise greater personal autonomy at college. For example, they are generally able to schedule their academic courses, select their own majors, and fully create their own social lives.

On the other hand, student-athletes are subjected to a greater degree of control by colleges. Some athletic departments maintain strict control over almost every aspect of certain student-athlete's college lives. For instance, institutions will control student-athlete's decision-making to the point where athletes do what they are told. Some will never look over course descriptions or educational requirements. Rather, academic course loads and concentrations of study are determined by assistant coaches in charge of academics.

On a social level, student-athletes are subjected to a degree of control by colleges regarding social functions. It is not an uncommon requirement for student-athletes to engage in athletically-related social activities, such as alumni and booster functions. Coaches also exert both control and influence over student-athletes' academic lives.

This limited personal autonomy during college distinguishes the student-athlete from the private student. A student-athlete participating in a college sports program has a daily schedule far removed from that of a private student. Student-athletes' lives in general are quite distinct — in terms of classes, studying, and social functions — from the lives of private students.

C. "Special Relationship" of Colleges and Student-Athletes

The college and student-athlete relationship should be legally recognized as a special one, which imposes on colleges a heightened duty of care when athletes suffer injury in the course of their participation in

65. Whang, supra note 12, at 38.
66. Davis, supra note 11, at 71.
68. Id. at 95.
intercollegiate athletic programs. This heightened duty should be recognized primarily because of the vast economic and non-economic benefits that student-athletes generate for universities.

As stated earlier, common law tort principles dictate that there is no duty to aid or protect another unless there exists a pre-existing special relationship between the parties.\(^\text{70}\) Although the Restatement (Second) of Torts\(^\text{71}\) does not specifically identify the college and student-athlete relationship as a special one, the Restatement (Second) of Torts does allow for recognition of special relationships other than those specifically listed in §314A.\(^\text{72}\) In order for a duty to arise, the risk of harm must derive from the special relationship.\(^\text{73}\) In addition, special relationships are most often predicated upon the existence of mutual dependence among the parties.\(^\text{74}\) In fact, courts have reiterated that mutual dependence between the parties is a pre-requisite of the recognition of special relationships.\(^\text{75}\)

1. Mutual Dependency

The college and student-athlete relationship is special because it can be characterized by mutual dependence. Colleges depend on student-athletes for the economic and non-economic benefits that their participation in athletic programs generates for schools. Student-athletes depend upon colleges for an education through athletic scholarships, physical and mental training, and discipline.

a. College's Dependence on Student-Athletes

Colleges rely on student-athletes' participation in collegiate athletic programs to generate economic benefits for their schools.\(^\text{76}\) For example, in 1988 Division I-A football generated $500 million in gate proceeds, television and licensing revenues, in addition to corporate sponsor

\(^{70}\) Supra note 41.

\(^{71}\) It must be recognized that the Restatement (Second) of Torts does not possess the force of law, but only represents the suggested standard of law.

\(^{72}\) Supra note 44.

\(^{73}\) See supra note 41, at § 314A, cmt.c (stating that the duty to aid or protect applies "only where the relation exists between the parties, and the risk of harm, or of further harm, arises in the course of that relation").

\(^{74}\) Id. at cmt.b.

\(^{75}\) See Whitlock v. University of Denver, 744 P.2d 54, 59-61 (Colo. 1987) (stating that mutual dependence underlies the recognition of a duty of care involving special relationships); Beach v. University of Utah, 726 P.2d 413, 416 (Utah 1986).

\(^{76}\) Supra note 8, at 254-56 (colleges depend on student-athletes to generate substantial revenues from intercollegiate competition).
and boosters contributions. The University of Michigan's athletic department realized $18.5 million in 1989 revenues, $7.4 million from football receipts alone. Corporate sponsorship of football bowl games has increased dramatically from $400 million in 1984 to $2.5 billion in 1991. Furthermore, it is unlikely that the NCAA could have negotiated a $1 billion contract with CBS to broadcast the Men's Basketball Tournament if the NCAA could not rely on its member institutions generating big dollars from the participation of its student-athletes.

In addition, colleges receive non-economic benefits from student-athlete's participation in collegiate sports. Winning, successful athletic teams are significant in building school enthusiasm for team support, marketing the college and its athletic programs to prospective applicants, bringing national media exposure to the college, and facilitating athletic recruitment. The 1993 decision in Kleinknecht v. Gettysburg College suggests that the non-economic benefits that student-athletes generate for colleges was a key factor in the court's decision to recognize a special relationship between the college and student-athlete in question.

b. Student-Athlete's Dependence on Colleges

Student-athletes depend on colleges and universities to provide an environment in which they can earn an education. Athletic scholarships provide student-athletes access to educational opportunities. Athletic scholarship recipients must attain a level of athletic performance in exchange for the access to an education. As one commentator stated about the student-athlete's one-year scholarship, "many coaches in various sports have terminated grants to players or used the threat of 'firing' to induce better athletic performances, [t]hus the leverage that one-year renewables give program heads over their players allows

77. Supra note 7, at 51.
78. Id. at 52.
80. Jones, supra note 1, at 154.
81. Erik Jensen, Taxation, the Student Athlete, and the Professionalization of College Athletics, 1987 Utah L. Rev. 35, 44 & n.39 (explaining that the impact of a successful athletic program can increase applications, alumni support and national exposure).
82. 989 F.2d 1360 (3rd Cir. 1993).
83. Barbara Lorence, Comment, The University's Role Toward Student-Athletes: A Moral or Legal Obligation?, 29 Duq. L. Rev. 343, 353 (1991) (stating that special relationships are most often exhibited by showing that one party is dependent on the other).
84. Davis, supra note 11, at 92.
coaches to demand obedience not only on the field or in the gym but also in the classroom.\textsuperscript{185}

Furthermore, student-athletes also depend on colleges to provide the opportunity to develop their athletic skills and prepare them for careers as professional athletes.\textsuperscript{86} Universities provide a structured program for student-athletes where they can develop their physical strength through daily workouts and practice. Regular season games and post-season tournaments further develop the student-athletes' physical stamina. Furthermore, this kind of schedule develops their mental toughness and builds discipline and character. Student-athletes rely on colleges to help build these skills, not only for life in general, but for possible lifelong athletic careers.

IV. UNIVERSITIES, STUDENT-ATHLETES AND A HEIGHTENED DUTY OF CARE

Under common law tort principles, the college and student-athlete relationship can be characterized as a special one. This relationship involves a mutual dependence, as discussed above, and control by colleges over student-athletes' lives. A duty of care should be imposed on colleges for foreseeable injuries suffered in the course of a student-athlete's participation in college sports programs. The important question then becomes what is the proper scope of that duty.

Many cases in which courts have imposed a duty of reasonable care for injuries occurring at school arising from the existence of a special relationship have occurred at the pre-college level. The 1987 Indiana Supreme Court case of Beckett v. Clinton Prairie School Corp.\textsuperscript{87} held that high school employees owed a duty to exercise ordinary and reasonable care regarding the health and safety of student-athletes under their supervision.\textsuperscript{88} Due to the fact that high school students typically are minors and are not afforded the same degree of autonomy as college students, this recognition of a duty of care based on a special relationship at the high school level was found to be proper.

At the same time, a duty of care for foreseeable injuries suffered by student-athletes should be equally applicable at the collegiate level.\textsuperscript{89}

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  \item \textsuperscript{185} Sperber, \textit{supra} note 8, at 209.
  \item \textsuperscript{86} Paul Weiler & Gary Roberts, \textit{Sports and the Law} 616 (1993) (declaring that some athletes primarily look to the reputation of the athletic department or coach as an avenue into the professional leagues).
  \item \textsuperscript{87} 504 N.E.2d 552 (Ind. 1987).
  \item \textsuperscript{88} \textit{Id.} at 553.
  \item \textsuperscript{89} Whang, \textit{supra} note 12, at 45-46.
\end{itemize}
As discussed at length earlier, colleges receive both substantial economic and non-economic benefits from student-athlete participation in intercollegiate athletic programs. From a health standpoint, it is not equitable for a college to reap these benefits from student-athletes without having a duty to provide a reasonable level of care for those athletes. An argument of unjust enrichment can be made where a heightened duty of care should exist for student-athlete's foreseeable injuries since colleges currently refuse to pay student-athletes to participate in college athletics.

A. Kleinknecht v. Gettysburg College

Some courts are beginning to recognize legal duties arising out of the “special relationship” between colleges and student-athletes. The Kleinknecht v. Gettysburg College case focused directly on whether a college owed a student-athlete a duty of care regarding injuries incurred during participation in a school-sponsored sport for which the student-athlete had been recruited. This case was the first to specifically address the issue of whether a college owes its student-athletes a duty of reasonable care based on the existence of a “special relationship.”

The plaintiff, Drew Kleinknecht, was a student-athlete recruited by Gettysburg College to play intercollegiate lacrosse. While engaged in a coach-supervised school lacrosse practice, the plaintiff suffered a heart attack and subsequently died. He had no history of heart problems or other unusual medical conditions. In a wrongful death suit filed by the athlete’s parents against the college, the district court granted summary judgment for the college. The court held it was not foreseeable that Kleinknecht, a student-athlete who seemed healthy, would suffer a heart attack. Therefore, the college had no legal duty to guard against such an event.

The Third Circuit, however, reversed the district court’s decision. It held that Gettysburg College did owe a duty to the student-athlete,

90. Supra note 8, at 254-56 & supra note 81, at 44 & n.39.
91. 989 F.2d 1360 (3rd Cir. 1993).
92. Whang, supra note 12, at 46.
93. Kleinknecht, 989 F.2d at 1365.
95. Kleinknecht, 989 F.2d at 1365.
based on the "special relationship" between the two. More specifically, the court held that the duty involved establishing preventive measures to provide treatment to student-athletes who need emergency medical assistance. The court found that the occurrence of a lifethreatening injury during participation in an intercollegiate contact sport was reasonably foreseeable.

The Kleinknecht court focused on two factors in recognizing a "special relationship" between the college and the student-athlete. First, the court found it significant that Drew Kleinknecht was actively recruited by the school to participate on its collegiate lacrosse team. The court declared that it was obvious that "the college recruited [Kleinknecht] for its own benefit, probably thinking that his skill at lacrosse would bring favorable attention and so aid the [c]ollege in attracting other students." The court implied that a mutual dependence existed between the college and Kleinknecht. Kleinknecht depended on the college for further education and the opportunity to play intercollegiate sports, and Gettysburg College depended on Kleinknecht to strengthen the reputation of the athletic department and the school. The Third Circuit realized that a duty of care, namely to provide safeguards to ensure the health of Kleinknecht, should be imposed on a school that utilizes a student-athlete's talents to help generate further interest and recruitment in the school.

The second factor the Kleinknecht court emphasized was that a duty of care was owed by the college to Drew Kleinknecht because he was acting in his capacity as an athlete when he collapsed, not in his capacity as a private student. The court declared that, at the time he collapsed,

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97. The Third Circuit's conclusion that there was a "special relationship" between Gettysburg College and Kleinknecht was based on an earlier decision in Hanson v. Kynast, No. CA-828 (Ohio Ct. App. June 3, 1985), rev'd on other grounds, 494 N.E.2d 1091 (1986). In Hanson, an intercollegiate lacrosse player was severely injured while competing in a intercollegiate match. The injured athlete sued the college for breach of its duty to have an ambulance present during the game. The trial court granted summary judgment for the college, but the court of appeals reversed and remanded the case back to the trial court.

The Third Circuit in the Kleinknecht case found that because the court of appeals in Hanson remanded the case back to the trial court for further findings of fact, the "court of appeals [in Hanson] implicitly held that the university owed a duty of care to the plaintiff." Hanson, No. CA-828 at 6.
98. Kleinknecht, 989 F.2d at 1367.
99. Id.
100. Id. at 1369.
101. Id. at 1367.
102. Id. at 1368.
103. Id.
"[the plaintiff] was not engaged in his own private affairs as a student at Gettysburg College. Instead, he was participating for an intercollegiate team sponsored by the College under the supervision of College employees."  

The court, therefore, made the significant distinction between students injured during their involvement in intercollegiate sports, and students injured while pursuing their private interests.  

The Kleinknecht court recognized a duty of care in favor of student-athletes participating in intercollegiate athletic programs, but a limited duty of care. The first limitation is that the duty of care exists only for injuries suffered by student-athletes during participation in the sport for which they were recruited. The second limitation is that a duty can only be imposed on the university if the injury is reasonably foreseeable. The court declared that a legal duty exists when the risk of harm is both foreseeable and unreasonable. Thus, a college only owes a duty of care to a limited number of students.  

B. Knapp v. Northwestern University  

The issue of a legal duty of colleges to protect student-athletes from injury continues to be debated. The issue is a broad one because it involves many questions, including whether a student-athlete has the right to play intercollegiate sports with a significant, possibly life-threatening health risk. Following the highly publicized death of Loyola Marymount basketball star Hank Gathers, universities and courts have wrestled back and forth over the dilemma. Should student-athletes legally be allowed to make their own decisions about playing with a known health-

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104. Id. at 1367.
105. Id. at 1368.
106. Id.
107. Id. at 1369.
108. The court implied that a student-athlete who suffers a cardiac arrest, for example, during a fraternity football game or intramural game is not owed the heightened duty of care as an athlete in Kleinknecht's situation is owed.
109. Hank Gathers played for Loyola Marymount College and was a star college basketball player. In 1990, while playing a West Coast Conference tournament game, Gathers collapsed on the court and went into cardiac arrest. Unable to revive his heart on the court, doctors tried to stimulate his heart with electric shock. Gathers was pronounced dead one hour and forty-one minutes after his collapse.

Gathers had collapsed before during a Loyola basketball game. He had a condition known as cardiac arrhythmia (or irregular heartbeat), but he continued to play and Loyola's athletic department cleared him to do so after consulting several physicians about the situation. Barbara Lorence, The University's Role Toward Student-Athletes: A Moral or Legal Obligation?, 29 Duq. L. Rev. 343 (1991).
risk? Or can universities exercise their duty of care and stop a student-athlete with a significant health risk from playing intercollegiate sports?

The 1996 case *Knapp v. Northwestern University*\(^{110}\) illustrates that universities can exercise their duty of care and stop a student with a significant health risk from playing intercollegiate sports. Like the *Kleinknecht* case, this case also involved a student specifically recruited to play intercollegiate sports. Nicholas Knapp is a Northwestern University sophomore\(^{111}\) who was recruited to play basketball at the university (he was recruited at the end of his junior year of high school\(^{112}\)). However, at the beginning of his senior year of high school, Knapp suffered cardiac arrest while playing a pick-up basketball game.\(^{113}\) He was revived by paramedics and subsequently had a cardioverter-defibrillator implanted in his body to prevent future attacks.\(^{114}\)

After Knapp suffered his cardiac arrest, Northwestern informed him that, whatever the ultimate medical decision, it would honor its commitment and still offer him a scholarship.\(^{115}\) Yet, about two months after enrolling at the university, Northwestern's head team physician declared Knapp ineligible to participate on Northwestern's men's basketball team for the 1995-96 school year.\(^{116}\) After the 1995-96 basketball season ended, Northwestern and the Big Ten Conference declared Knapp permanently ineligible to play intercollegiate basketball at Northwestern due to his medical condition.\(^{117}\)

In a subsequent suit filed by Knapp against the university, a federal district court found Knapp medically eligible to play intercollegiate basketball at Northwestern.\(^{118}\) Northwestern's motion for summary judgment was denied and the court held that intercollegiate basketball was a "major life activity" under Section 504 of the Rehabilitation Act of 1973.\(^{119}\) The district court further stated that the university unfairly de-
nied Knapp because he was "otherwise qualified" to play intercollegiate basketball at Northwestern.\textsuperscript{120}

The Seventh Circuit, however, reversed the district court's decision and remanded the case.\textsuperscript{121} The Court declared that Knapp was not "otherwise qualified" to play intercollegiate basketball at Northwestern.\textsuperscript{122} The Court stated that Knapp was not "disabled" under the meaning of the Rehabilitation Act because "playing intercollegiate basketball . . . is not in and of itself a major life activity."\textsuperscript{123} The Seventh Circuit declared that Knapp was not discriminated against when declared ineligible to play intercollegiate basketball by Northwestern.

Regarding a college's duty of care to its student-athletes, the Seventh Circuit discusses the existence of an implied duty of care imposed on Northwestern University. The Seventh Circuit Judge Terence Evans stated that the issue of Knapp's eligibility to play intercollegiate basketball was not a decision for the courts, but an issue for the university to decide:

The district court judge in this case believed that . . . the decision on whether Knapp should play falls in the lap of the court . . . We disagree with the district court's legal determination that such decisions are to be made by the courts and believe instead that medical determinations of this sort are best left to team doctors and universities as long as they are made with reason and rationality and with full regard to possible and reasonable accommodations.\textsuperscript{124}

provide an even handed treatment of qualified disabled persons and to prevent discrimination based on a perceived inability to function in a particular context. For a prima facie case under the Act, one must demonstrate that (1) he/she is "disabled" under the meaning of the Act, (2) he/she is "otherwise qualified" for the position sought, (3) he/she is excluded from the position solely because of the disability, and (4) the position from which he/she is excluded is part of a federally funded program. Rehabilitation Act of 1973, § 504(a) (1973), as amended 29 U.S.C.A. § 794 (1992).

121. Knapp v. Northwestern Univ., 1996 WL 676190 (7th Cir. (Ill.)).
122. \textit{Id.} at 7. Knapp contended that playing intercollegiate basketball was an integral part of the "major life activity" of learning and if not allowed to play, Northwestern would be "substantially limiting" his education. \textit{Id.} at 4. However, the Seventh Circuit stated that "[p]laying intercollegiate basketball obviously is not in and of itself a major life activity, as it is not a basic function of life on the same level as walking, breathing, and speaking. Not everyone gets to go to college, let alone play intercollegiate sports." \textit{Id.} at 5. The court further stated that "[b]ecause learning through playing intercollegiate basketball is only one part of the education available to Knapp at Northwestern, even under a subjective standard, Knapp's ability to learn is not substantially limited. . . .[t]he fact that Knapp's goal of playing intercollegiate basketball is frustrated does not substantially limit his education." \textit{Id.} at 7.
123. \textit{Id.} at 5. \textit{See supra} note 122.
124. \textit{Id.} at 10.
By reversing the district court and allowing Northwestern to make the ultimate decision on Knapp's eligibility, the Seventh Circuit stated, in effect, that colleges and universities can exercise a duty of care and protect their student-athletes against foreseeable injuries.\textsuperscript{125} The \textit{Knapp} court implicitly recognizes that a “special relationship” exists between the student-athlete and the university.\textsuperscript{126} By stating that “the university has the right to determine that an individual is not otherwise qualified to play,”\textsuperscript{127} the court recognizes, as the \textit{Kleinknecht} court did, that Northwestern and colleges in general have a duty to protect their student athletes for the sport in which they were recruited and when the severity of the potential injury is high.\textsuperscript{128} At the same time, the Seventh Circuit is declaring that student-athletes can not easily waive this duty of care. In fact, Nicholas Knapp and his parents were willing to sign a liability waiver, which could have absolved Northwestern University should Knapp have suffered death.\textsuperscript{129} While not couched in the same language of the \textit{Kleinknecht} case, the decision in \textit{Knapp} supports the legal recognition of a duty of care owed to student-athletes by colleges based on the “special relationship” between the two.

\textsuperscript{125} Despite conflicting expert testimony from Knapp's experts, Northwestern's experts agreed with the school's team doctors that Knapp's participation in competitive Big Ten basketball presented an unacceptable level of risk. According to Dr. Maron, one of Northwestern's experts, the most important fact in assessing Knapp's current risk of sudden cardiac death while playing intercollegiate basketball was the fact that his previous sudden cardiac death was induced by playing basketball. \textit{Id.} at 9.

\textsuperscript{126} The \textit{Kleinknecht} court emphasized two factors in recognizing a “special relationship” existing between the college and student-athlete: (1) the college actively recruited the student-athlete, and therefore intended to benefit from his participation in intercollegiate sports, and (2) the relationship stems from the fact that the student-athlete is participating in his capacity as an athlete, not as a private student.

Here, in the \textit{Knapp} case, a “special relationship” exists because Knapp was actively recruited by Northwestern. \textit{Id} at 1. Furthermore, Northwestern disqualified Knapp from playing on its intercollegiate team, and does not restrict him from playing pick-up basketball or using the recreational facilities on campus or physically exerting himself as a private student. \textit{Id.} at 1.

\textsuperscript{127} \textit{Id.}

\textsuperscript{128} \textit{See supra} part IV.A.

\textsuperscript{129} After the Hank Gather's incident, it is unlikely that courts in the near future will bootstrap universities and force them to allow a high-risk, significantly health-impaired student-athlete to play intercollegiate sports, particularly a top athlete who was recruited. If courts do force the issue, not only is the risk of harm great for the health-impaired student-athlete, but universities then must live with the potential of the worst-case scenario happening — the student-athlete dying during a game — which would most likely hurt the university's reputation, garner bad press, and inevitably hurt future recruiting.
V. Conclusion

Both the Kleinknecht case and the recent decision in Knapp demonstrate that the courts are beginning to understand that collegiate student-athletes are owed a heightened duty of care by colleges and universities. Yet, as college student-athletes continue to play a significant role in generating more and more economic and non-economic benefits for college athletic programs, the nature of the college and student-athlete relationship will remain amorphous and not fully defined in terms of colleges “owe” student-athletes.

Given the entrenched system of amateurism that continues to frame college athletics today, student-athletes’ relationship with colleges must change if colleges continue to refuse to compensate athletes financially. A heightened duty of care for foreseeable injuries suffered in the course of student-athletes’ participation in intercollegiate sports programs must be consistently recognized. If courts follow the lead of the Kleinknecht and Knapp decisions, student-athletes will be afforded more complete protection from the institutions who already receive so much from student-athletes’ involvement in intercollegiate college sports.

Andrew Rhim